

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 Eugene Nunnery,

4           Petitioner

5 v.

6 William Gittere, et al.,

7           Respondents

Case No.: 3:19-cv-00618-JAD-WGC

**Order Denying Reconsideration of  
Acceptance of Conflict Waiver and  
Granting Extension of Time**

[ECF Nos. 10, 12]

9           In this capital habeas corpus action, the court appointed the Federal Public Defender's  
10 Office for the District of Nevada (FPD) to represent the petitioner, Eugene Nunnery.<sup>1</sup> Following  
11 that appointment, the court accepted Nunnery's waiver of a potential conflict of interest  
12 identified by the FPD with respect to its representation of Nunnery.<sup>2</sup> Respondents have filed a  
13 motion for reconsideration requesting reconsideration of the court's acceptance of Nunnery's  
14 waiver,<sup>3</sup> which Nunnery opposes.<sup>4</sup>

15           Having considered the opposing points and authorities, I conclude that respondents do  
16 not show reconsideration is warranted. The FPD provided a detailed explanation of the possible  
17 conflicts and the measures it has taken (and will take) to prevent conflicts from impacting its  
18 representation.<sup>5</sup> Neither the FPD nor any individual assistant FPD was involved in Nunnery's  
19 state court proceedings. The only individuals employed by the FPD who worked directly on

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21 <sup>1</sup> ECF No. 5.

22 <sup>2</sup> ECF No. 9.

23 <sup>3</sup> ECF No. 10.

<sup>4</sup> ECF No. 11.

<sup>5</sup> ECF Nos. 7, 8.

1 Nunnery's case in state court were investigators now employed in units of the FPD separate from  
2 the capital habeas unit.<sup>6</sup> Under these circumstances, I find that it is reasonable for the FPD to  
3 believe that it will be able to provide competent and diligent representation to Nunnery in this  
4 case.<sup>7</sup> I further conclude that Nunnery has been fully informed of the conflicts and has waived  
5 them.<sup>8</sup>

6 Nunnery also moves for an extension of time to file an amended petition.<sup>9</sup> The  
7 declaration of Nunnery's counsel includes factors establishing good cause for the delay and  
8 indicates that opposing counsel does not the request.<sup>10</sup> I will allow the extension but, in doing  
9 so, I make no assurances as to the timeliness of Nunnery's petition or any claim.

10 **IT IS THEREFORE ORDERED** that respondents' Motion for Reconsideration [ECF  
11 **No. 10] is DENIED.**

12 **IT IS FURTHER ORDERED** that petitioner's Motion for Extension of Time to File an  
13 Amended Petition [ECF No. 12] is **GRANTED. Petitioner has until and including**  
14 **September 17, 2020, the file his amended petition.** In all other respects, the court's scheduling  
15 order of November 19, 2019, (ECF No. 9) continues to govern these proceedings.

16 Dated: January 22, 2020

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18 U.S. District Judge Jennifer A. Dorsey  
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21 <sup>6</sup> ECF No. 7 at 3.

22 <sup>7</sup> See Nevada Rule of Professional Conduct 1.7(b).

23 <sup>8</sup> ECF No. 8.

<sup>9</sup> ECF No. 12.

<sup>10</sup> *Id.* at 3–10.